

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1164 CUTTACK, THURSDAY, JULY 21, 2005 / ASADHA 30, 1927

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st July 2005

No. 5471-li/1(B)-59/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th April 2005 in Industrial Dispute Case No. 76 of 1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Atlas Engineering Works Private limited, Bhubaneswar and its workman Shri Nimain Charan Rout was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 76 OF 1992
Dated the 28th April 2005

Present:

Shri P. K. Sahoo, o.s.j.s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between:

| | |
|--|----------------------------|
| The Management of Atlas Engineering Works Private Limited, Bhubaneswar. | ... First Party—Management |
| And | |
| Its workman | ... Second Party—Workman |
| Shri Nimain Charan Rout | |

Appearances:

| | |
|--------------------------------------|---------------------------------|
| For the First Party—Management | ... Shri A. P. Jena, Advocate |
| For the Second Party—Workman himself | ... Shri S. B. Mishra, Advocate |

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department memo No. 7200(5)-L.E., dated the 27th May 1992 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :–

“Whether the termination of services of Shri Nimain Charan Rout, Maintenance Supervisor, Grade-II with effect from the 7th January 1991 by the management of Atlas Engineering Works Private Limited, Bhubaneswar is legal and/or justified ? If not, what relief Shri Rout is entitled to ?”

3. Stating in a little detail the case of the workman Shri Nimain Charan Rout is that he joined in the establishment of the management of Atlas Engineering Works Private Limited, Bhubaneswar (in short the management) as a Welder with effect from the 25th April 1983 on probation for a period of six months. He continued to work till he was promoted to the post of Supervisor Gr. II on the 15th October 1985. Thereafter he rendered continuous service till the 5th January 1991 when the management issued a notice regarding the suspension of work with effect from the 7th January 1991. Concerning the suspension of work a dispute was raised by the Union before the Labour Officer, Bhubaneswar and an agreement between the Union and the management was effected duly signed by the representatives of the management as well as the Union. It was agreed upon by the parties that the factory would be opened within February 1991 but infact the factory was not opened. Subsequently he came to know that he was terminated from service by the management with effect from the 7th January 1991. According to the workman, he had rendered continuous uninterrupted service for years together with much sincerity, devotion and to the utmost satisfaction of the management but the management terminated him from service. During tenure of his service neither any allegation nor any proceeding was drawn up against him. While challenging the action of the management in terminating him from service with effect from the 7th January 1991 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act), he has now prayed for his reinstatement in service with back wages and other service benefits. Hence the reference.

4. The management, on the other hand, filed written statement opposing the claim of the workman *inter alia* contended that the Unit M/s Atlas Engineering Works Private Limited was set up for manufacture of Television Picture Tubes. The activity finally was not considered to be technically phisible as a result the management incurred a huge amount of accumulated loss. In spite of the financial economic constraints the management used to pay the salary and wages to all the employees regularly on every month. The management was planning to revive the unit so that the unit would run at the optimum level but finally found that the revival of unit had lost its practicability. Owing to the aforesaid reason the mangement was constrained to suspend all its work and operations with effect from the 7th January 1991. According to the

management, the claim already made by the workman is misconceived, baseless and without any genuine ground which has no bearing in law. The management after complying with the mandate of Section 25-F of the Act terminated the services of the workman with effect from the 7th January 1991 and the action taken in this respect was legal and justified. On the above back grounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :-

ISSUES

- "(i) Whether the management terminated the services of the workman with effect from the 7th January 1991 due to surplusage or closure of the unit on payment of the due compensation ?
- (ii) Is the action of the management legal and/or justified ? If not, to what relief ?"

6. The workman in support of his case has examined himself as W. W. 1 and the A. L. O., Shri Ajaya Kumar Patnaik as W. W. 2 and has relied upon the xerox copies of the documents such as appointment letter, promotion order, notice with regard to suspension of work with effect from the 7th January 1991, agreement and the letter of the management marked as Exts. 1 to 5 respectively. On the other hand, the management has neither examined any witness nor relied upon any document in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

It reveals from the evidence of the workman Shri Nima Charan Rout already examined as W. W. 1 that he joined in the establishment of the management on the 25th April 1983 vide Ext. 1 and continued to work till the 5th January 1991 on which day the management had issued a notice relating to suspension of work with effect from the 7th January 1991. The notice vide Ext. 3 was also affixed in the notice board. Concerning the suspension of work a dispute was raised before the Labour Officer, Bhubaneswar and there was an agreement between the Union and the management marked as Ext. 4. As per the agreement the factory was to open by February, 1991 but infact, the factory was not opened. Subsequently he came to know about his termination from service with effect from the 7th January 1991. He admits in his cross-examination that he has not gone to the factory since the 7th January 1991 and the factory has been closed since March 1991. He has denied his knowledge if the factory has been remained closed till date. He further admits that although the draft with regard to all his legal dues had been sent to him in his home address but he had not asked the management relating to the above draft. It is also in his cross-examination that he received the letter from the management to inform the latest and correct address for delivery of the said draft but he did not inform anything to the management even after receipt of the said letter. Even he had

not gone to the management to accept the said draft. On perusal of his evidence being coupled with the proved documents it is seen that the factory was closed since the 7th January 1991 and he had not gone to the factory since the date of its closure. W. W. 2, Shri Ajaya Kumar Patnaik, the then Assistant Labour Officer, Bhubaneswar in his evidence has clearly stated that on the 23rd January 1991 there was minutes of discussion but not an agreement between the management and the General Secretary of the Bhubaneswar Industrial Workers Union and the discussion was reflected in writing but he has denied his knowledge if the said discussion was final and binding on the parties. It is clearly evident from the evidence of W. W. 2 that after closure of the factory there was a minutes of discussion between the parties on the 23rd January 1991.

8. The perusal of the documents Exts. 3 and 4 clearly emerges that due to financial crisis the unit suffered a substantial loss due to non-productivity and on account of all sources of overheads and recurring expenditures without any return, as a result of which the company incurred a huge amount of accumulated loss. Therefore the management was constrained to suspend all its work and operations with effect from the 7th January 1991. Although it was agreed upon by the management to open the factory within February, 1991 but infact the factory was not opened due to such critical financial crisis. Accordingly the workman was duly informed vide Ext. 5 with regard to his retrenchment compensation and at the same time he was requested to furnish the detail and correct present address so that the management would be able to send the compensation. The workman in his evidence has categorically stated that even after receipt of the said letter he had neither gone to the factory nor approached the management with regard to the payment of compensation. On careful scrutiny of the evidence already led by the workman being coupled with the documents. It is crystal clear that due to critical financial crisis the factory suffered a substantial loss and the management was constrained to suspend all its work and operations with effect from the 7th January 1991 and the above fact was duly informed to the workman and notice to that effect was also pasted in the notice board. Even after receipt of the letter the workman had neither gone to the factory nor approached the management for payment of his retrenchment compensation which clearly leads me to arrive at a conclusion that the factory remained closed with effect from the 7th January 1991 and that the concerned workman was fully aware of the closure of the factory with effect from the said date and that the retrenchment compensation was duly offered to the workman to which he did not accept intentionally in view of the pendency of the litigation. After carefully examining all the aspects of the case, I am of the considered view that the workman is not entitled to any relief as prayed for.

9. Admittedly the factory has been closed since the 7th January 1991 and after closure of the factory the workman had never gone to the factory. Since the factory has been closed with effect from the 7th January 1991 the claim of the workman for his reinstatement in service can not be accepted and acted upon. In that view of the matter, the workman is not entitled to the relief of reinstatement. But with regard to the compensation due to closure of the factory, the management is directed to pay the closure compensation as deemed fit as per law. The above issues are answered accordingly.

10. Hence it is ordered :

ORDER

That the termination of service of Shri Nimain Charan Rout, Maintenance Supervisor Gr. II with effect from the 7th January 1991 by the management of Atlas Engineering Works Private Limited, Bhubaneswar is legal and justified. The workman Shri Rout is not entitled to any relief as prayed for except the closure compensation. The management is directed to pay the closure compensation to the workman in accordance with law as per the Act.

The reference is thus answered accordingly.

Dictated and corrected by me

P. K. SAHOO

28-4-2005

Presiding Officer

Labour Court, Bhubaneswar

P. K. SAHOO

28-4-2005

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

D. MISHRA

Under-Secretary to Government